

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	13-CR-00220(RJD)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	
BEBARS BASLAN,	:	Thursday, July 24, 2014
	:	9:30 a.m.
Defendant.	:	
	:	
	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL  
BEFORE THE HONORABLE RAYMOND J. DEARIE  
SENIOR UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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Proceedings recorded by mechanical stenography, transcript  
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1 (In open court outside the presence of the jury.)

2 (Defendant enters the courtroom.)

3 THE COURT: Counsel -- oh, I think Mike is showing  
4 it to you. I may add a phrase in the conspiracy instruction.  
5 Given the prominence of the individual Jack, I wanted to make  
6 it absolutely clear that Jack could not be considered a  
7 co-conspirator. All right. Are we ready?

8 MR. SAVITT: Yes.

9 THE COURT: All right, Ellie.

10 COURTROOM DEPUTY: Okay.

11 MR. SMITH: Judge, Mr. Savitt indicated that he was  
12 going to seek an additional instruction on punishment.

13 THE COURT: You did?

14 MR. SAVITT: I did.

15 THE COURT: And that is?

16 MR. SAVITT: And that is to -- I don't know if it's  
17 too late to do it right now, but --

18 THE COURT: Well, the jury's on their way in, so I  
19 suggest you better do it.

20 MR. SAVITT: Better hurry up. So as to Count One,  
21 we ask for an instruction to the jury about the mandatory  
22 minimum, 30 years. And the reason for that is because the  
23 Court of Appeals specifically left it open in the case where  
24 they reversed Judge Weinstein. I put it all in an e-mail to  
25 Mike. I'll put it in a more formal letter on ECF.

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1 I think I'm obviously arguing against the weight of  
2 authority right now, but the reason that I'm asking for it is  
3 because, in the circumstances of this case where the defendant  
4 was lured across state lines and he's facing a mandatory  
5 minimum of 30 years, I believe that this would be an  
6 exceptional case where the jury should be so instructed.

7 I'm putting it on the record in order to preserve my  
8 client's appellate rights. I know I didn't do this earlier  
9 and I apologize for that.

10 THE COURT: Yes, this is kind of issue by ambush.

11 MR. SAVITT: I didn't mean to do that ambush part,  
12 but it's my fault. I'm not seeking to make any excuses for  
13 that.

14 THE COURT: Well, there's not a lot I can say on the  
15 subject, but given where we are in the proceedings, I'm simply  
16 going to deny the request. Bring in the jury, Ellie.

17 MR. SAVITT: Okay, Your Honor.

18 THE COURT: I'm no fan of mandatory minimums. I  
19 think everybody knows that.

20 MR. SAVITT: Yes, Your Honor.

21 THE COURT: I'm going to do what Judge Weinstein  
22 did, refuse to give the instruction.

23 MR. SAVITT: I understand that too, Your Honor.

24 THE COURT: Okay.

25 (Jury enters courtroom.)

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1 THE COURT: Good morning, folks. Please be seated.  
2 Ordinarily, at this point, I would be giving you my  
3 instructions. Given the status of my voice, I think it best  
4 that you hear from someone who speaks with a clearer voice  
5 than mine, so I've asked my law clerk, with counsel's  
6 permission, to read the charge to you.

7 Please listen carefully. Don't be confused by his  
8 references to the first person, because I had intended to give  
9 it to you myself. And after you've retired to the jury room,  
10 you'll be given copies of the charge, but I invite your very  
11 careful attention now. Okay.

12 THE LAW CLERK: Thank you, Judge.

13 Members of the jury, now that the evidence has been  
14 presented and the attorneys have concluded their closing  
15 arguments, it is my responsibility to instruct you on the law  
16 that governs this case. Shortly after you retire for your  
17 deliberations, I will provide you with several copies of these  
18 instructions.

19 Let me remind you that in accordance with your oath  
20 as jurors, it is your duty to follow the law as I state it.  
21 You have the important responsibility to judge the facts. And  
22 you alone are the judges of the facts, not counsel, not I.

23 I express no view whether the defendant is guilty or  
24 not guilty. You should not draw any inference or conclusion  
25 as to whether he is guilty or not guilty from anything I may

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1 have said or done. You will decide the case solely on the  
2 evidence and the law.

3 The prosecution is brought in the name of the United  
4 States, but that does not entitle the government to any  
5 greater consideration than the defendant. The parties -- the  
6 government and the defendant -- are equal before this Court.  
7 They are entitled to equal consideration.

8 The evidence comes in several forms: Sworn  
9 testimony of witnesses, both on direct and cross-examination;  
10 exhibits that have been received by the Court in evidence; and  
11 facts to which the lawyers have agreed or stipulated.

12 The following things are not evidence and are to be  
13 disregarded by you in deciding what the facts are:

14 Arguments or statements by lawyers are not evidence.

15 Questions put to the witnesses, standing alone, are  
16 not evidence.

17 Objections to the questions or to offered exhibits  
18 are not evidence. In this regard, attorneys have a duty to  
19 their clients to object when they believe evidence should not  
20 be received. You should not be influenced by the objection or  
21 by the Court's ruling on it. If the objection was sustained,  
22 ignore the question and any answer that may have followed. If  
23 the objection was overruled, treat the answer like any other  
24 answer.

25 Testimony that has been excluded, stricken, or that

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1 you have been instructed to disregard is not evidence and must  
2 be disregarded.

3           You must not be influenced by sympathy, prejudice or  
4 public opinion. I remind you that each of you has undertaken  
5 a solemn obligation, a sworn obligation to decide this case  
6 solely on the evidence. You must carefully and impartially  
7 consider the evidence, follow the law as I state it, and reach  
8 a just verdict, regardless of the consequences.

9           An indictment is merely an accusation in writing.  
10 It is not evidence of guilt. It is entitled to no weight in  
11 your determination of the facts. The defendant has pleaded  
12 not guilty, thereby placing in issue each allegation in the  
13 indictment.

14           The government has the burden of proving guilt  
15 beyond a reasonable doubt. This burden never shifts to the  
16 defendant. The defendant does not have to prove his  
17 innocence. He need not have submitted any evidence at all.  
18 The law presumes the defendant innocent of the charges against  
19 him. I instruct you that the defendant is to be presumed by  
20 you to be innocent throughout your deliberations until such  
21 time, if ever, you as a jury are satisfied that the government  
22 has proven the defendant guilty beyond a reasonable doubt with  
23 respect to the offense you are considering.

24           I have said that the government must prove the  
25 defendant guilty beyond a reasonable doubt. The question,

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1 naturally, is what is a reasonable doubt? The words almost  
2 define themselves. It is a doubt based upon reason and common  
3 sense. It is a doubt that a reasonable person has after  
4 carefully weighing all of the evidence. It is a doubt that  
5 would cause a reasonable person to hesitate to act in a matter  
6 of importance in his or her personal life. Proof beyond a  
7 reasonable doubt must, therefore, be proof of such a  
8 convincing character that a reasonable person would not  
9 hesitate to rely and act upon it in the most important of his  
10 or her own affairs.

11 A reasonable doubt is not a caprice or whim; it is  
12 not speculation or suspicion. It is not an excuse to avoid  
13 the performance of an unpleasant duty. And it is not  
14 sympathy.

15 In a criminal case, the burden is at all times upon  
16 the government to prove guilt beyond a reasonable doubt. The  
17 law does not require that the government prove guilt beyond  
18 all possible doubt. Proof beyond a reasonable doubt is  
19 sufficient to convict. This burden never shifts to the  
20 defendant, which means that it is always the government's  
21 burden to prove each of the elements of the crimes charged  
22 beyond a reasonable doubt.

23 There are, generally speaking, two types of evidence  
24 from which you may find the truth as to the facts. One is  
25 direct evidence, such as the testimony of an eyewitness or

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1 participant, or physical evidence. The other is indirect or  
2 circumstantial evidence, evidence of facts and circumstances  
3 from which it is reasonable to infer or deduce connected facts  
4 that reasonably follow in the common experience.

5           There is a simple example of circumstantial evidence  
6 that is often used in this courthouse. Assume that when you  
7 came into the courthouse this morning the sun was shining and  
8 it was a nice day. The courtroom has no windows and you could  
9 not look outside. As you were sitting here, someone walked in  
10 with an umbrella that was dripping wet. Somebody else then  
11 walked in with a raincoat that also was dripping wet.

12           Now, you cannot look outside of the courtroom to see  
13 whether or not it is raining, so you have no direct evidence  
14 of that fact. But, on the combination of facts that I have  
15 asked you to assume, it would be reasonable and logical for  
16 you to conclude that it had been raining.

17           That is all there is to circumstantial evidence. On  
18 the basis of reason, experience and common sense, you infer  
19 from an established fact or facts the existence or the  
20 nonexistence of some other fact.

21           There is no distinction between the weight to be  
22 given to direct evidence and the weight to be given to  
23 circumstantial evidence. No greater degree of certainty is  
24 required of circumstantial evidence than of direct evidence.

25           When the attorneys on both sides stipulate, that is,



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1 agree, to the existence of a fact, you the jury must accept  
2 the stipulation and consider the fact as proven.

3 When the attorneys on both sides stipulate that a  
4 witness, if called, would have given certain testimony, the  
5 jury must accept as true the fact that the witness would have  
6 given that testimony. However, it is for you to determine the  
7 effect or weight given to that testimony.

8 The indictment charges "on or about" and "between"  
9 certain dates. The proof need not establish with certainty  
10 the exact dates of the alleged offenses. It is sufficient if  
11 the evidence establishes beyond a reasonable doubt that an  
12 offense was committed on a date reasonably near to the dates  
13 alleged.

14 You should weigh all the evidence in the case.  
15 After considering the evidence or the lack of evidence, if you  
16 are not convinced of the guilt of the defendant beyond a  
17 reasonable doubt with respect to any charge, then you must  
18 find him not guilty of that charge. On the other hand, if you  
19 are convinced beyond a reasonable doubt that the defendant is  
20 guilty of an offense charged in the indictment, then you  
21 should find him guilty of that charge.

22 I will now turn my attention to the specific charges  
23 in the indictment. The indictment contains four counts for  
24 your consideration. I will first instruct you on Count One,  
25 which charges the defendant with interstate Travel With Intent

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1 to Commit Aggravated Sexual Abuse of a Minor Under Twelve.  
2 Count Three charges the defendant with Attempted Sexual  
3 Exploitation of a Child. Count Four charges the defendant  
4 with Attempted Coercion and Enticement of a Minor to Engage in  
5 Illegal Sexual Activity. And finally, Count Two charges the  
6 defendant with Conspiracy to Sexually Exploit a Child.

7 Count One reads as follows: "On or about March 19,  
8 2013, within the Eastern District of New York, the District of  
9 New Jersey and elsewhere, the defendant Bebars Baslan crossed  
10 a state line with intent to engage in a sexual act, to wit:  
11 contact between the mouth and the vulva, contact between the  
12 mouth and the penis and the intentional touching, not through  
13 the clothing, of the genitalia of another person who had not  
14 attained the age of 12 years with an intent to abuse,  
15 humiliate, harass, degrade or arouse or gratify the sexual  
16 desire of any person, with another person who had not attained  
17 the age of 12 years, to wit: John Doe I and Jane Doe I,  
18 individuals whose identities are known to the Grand Jury."

19 Count One charges the defendant with violating  
20 Section 2241(c) of Title 18 of the United States Code. That  
21 section provides, in relevant part: "Whoever crosses a state  
22 line with intent to engage in a sexual act with a person who  
23 has not attained the age of 12 years shall be punished in  
24 accordance with law."

25 In order to prove the defendant guilty of Travel

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1 With Intent to Commit Aggravated Sexual Abuse of a Minor Under  
2 Twelve, the government must prove each of the following two  
3 elements beyond a reasonable doubt: First, that the defendant  
4 crossed a state line; and second, that the defendant did so  
5 with the intent to commit a sexual act with a person under the  
6 age of 12, specifically, Daniel, who is identified in the  
7 indictment as John Doe I, or Leah, who is identified in the  
8 indictment as Jane Doe I.

9 The first element of Count One that the government  
10 must prove beyond a reasonable doubt is that the defendant  
11 crossed a state line. I instruct you that to travel from the  
12 State of New York to the State of New Jersey, one must cross a  
13 state line.

14 The second element of Count One that the government  
15 must prove beyond a reasonable doubt is that the defendant  
16 crossed a state line with the intent to commit a sexual act  
17 with a person under the age of 12. The term "sexual act"  
18 means: Contact between the mouth and the penis; contact  
19 between the mouth and the vulva; or the intentional touching,  
20 not through the clothing, of the genitalia of another person  
21 who has not attained the age of 12 years with an intent to  
22 abuse, humiliate, harass, degrade, or arouse or gratify the  
23 sexual desire of any person. With regard to these types of  
24 sexual acts, only "intentional touching, not through the  
25 clothing, of the genitalia of another person who has not

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1 attained the age of 12 years old" requires the intent that I  
2 just described to you. With respect to contact between the  
3 mouth and penis and contact between the mouth and vulva, no  
4 specific intent is necessary.

5 To establish that the defendant crossed a state line  
6 with the intent to commit a sexual act with a person under the  
7 age of 12, it is not necessary for the government to prove  
8 that the illegal sexual activity was the sole purpose for  
9 crossing the state line. A person may have several different  
10 purposes or motives for such travel, and each may prompt in  
11 varying degrees the act of making the journey. The government  
12 must prove beyond a reasonable doubt, however, that a  
13 significant or motivating purpose of the travel across a state  
14 line was to engage in a sexual act with a child under 12 years  
15 old. In other words, the illegal sexual activity must not  
16 have been merely incidental to the trip.

17 Finally, to establish this second element, the  
18 government is not required to prove that the defendant  
19 actually engaged in any sexual act, as I have defined that  
20 term for you, after he crossed a state line.

21 The defendant is also charged with Travel With  
22 Intent to Commit Aggravated Sexual Abuse of a Minor Under  
23 Twelve on an aiding and abetting theory. Therefore, you may  
24 find that the defendant is guilty of Count One if you find  
25 that he aided and abetted another person to commit this crime.

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1 The aiding and abetting statute, Section 2 of Title 18 of the  
2 United States Code, provides that: "Whoever commits an  
3 offense against the United States or aids, abets, counsels,  
4 commands, induces or procures its commission, is punishable as  
5 a principal; whoever willfully causes an act to be done, which  
6 if directly performed by him or another would be an offense  
7 against the United States, is punishable as a principal."

8 This means that if you find that the defendant knowingly and  
9 willfully aided and abetted another person in the commission  
10 of a crime, he is as guilty as if he personally committed it.

11 Before you can convict the defendant on the ground  
12 that he aided and abetted a commission of the crimes charged,  
13 you must first find beyond a reasonable doubt that another  
14 person committed that crime. No one can be convicted of  
15 aiding and abetting the criminal acts of another if no crime  
16 was committed by the other person in the first place. But if  
17 you do find that a crime was committed, then you must  
18 determine whether the defendant aided or abetted the  
19 commission of that crime.

20 In order for the defendant to be guilty of aiding  
21 and abetting, it is necessary that there be more than mere  
22 knowledge that a crime is being committed and acquiescence in  
23 the crime itself. The defendant must have willfully  
24 associated himself in some way with the criminal venture; he  
25 must have willfully participated in it as something he wanted

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1 to bring about. That is, the defendant must willfully seek by  
2 some act to make the criminal venture succeed. Mere presence  
3 or relationship to the person who actually committed the  
4 crime, even coupled with knowledge that a crime was committed,  
5 is not enough.

6 If you find that the government has proven each of  
7 the elements of the crime alleged in Count One beyond a  
8 reasonable doubt, you should find the defendant guilty on  
9 Count One. If the government fails to prove any one element,  
10 you must find the defendant not guilty as to Count One.

11 The allegations in the indictment require that in  
12 order to sustain its burden of proof, the government must  
13 prove that the defendant acted knowingly, intentionally or  
14 willfully. An act is done knowingly if done voluntarily or  
15 intentionally but not because of mistake, accident or other  
16 innocent reason. An act is done intentionally if done  
17 voluntarily and with the specific intent to do something the  
18 law forbids. In order to prove that the defendant acted  
19 willfully, the government must prove that he acted knowingly  
20 and purposefully and that he intended to commit an act which  
21 the law forbids.

22 The person need not be aware of the specific law or  
23 rule that his conduct may be violating, but he must act with  
24 the specific intent to do whatever it is the law forbids. The  
25 defendant's knowledge is a matter of inference from facts

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1 proved. These issues of knowledge and intent require you to  
2 make a determination about the defendant's state of mind,  
3 something that rarely can be proven directly. A wise and  
4 careful consideration of all the circumstances of the case  
5 may, however, permit you to make such a determination as to  
6 the state of mind of the defendant. Indeed, in your everyday  
7 affairs, you frequently are called upon to determine a  
8 person's state of mind from his or her words and actions in a  
9 given circumstance. You are asked to do the same here.

10           The third count of the indictment charges defendant  
11 with Attempted Sexual Exploitation of a Child. Count Three  
12 reads as follows: "On or about and between February 1, 2013  
13 and March 19, 2013, both dates being approximate and  
14 inclusive, within the Eastern District of New York and  
15 elsewhere, the defendant Bebars Baslan did knowingly and  
16 intentionally attempt to employ, use, persuade, induce, entice  
17 and coerce a minor, to wit: John Doe I, John Doe II and Jane  
18 Doe I, to engage in sexually explicit conduct for the purpose  
19 of producing one or more visual depictions of such conduct  
20 knowing and having reason to know that such visual depictions  
21 would be transported using any means and facility of  
22 interstate and foreign commerce, and in and affecting  
23 interstate and foreign commerce, and which visual depictions  
24 were to be produced using materials that had been mailed,  
25 shipped and transported in and affecting interstate and

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1 foreign commerce, by any means, to wit: one or more digital  
2 cameras."

3 Count Three of the indictment charges the defendant  
4 with violating Section 2251(e) of Title 18 of the United  
5 States Code. That section provides, in relevant part: "Any  
6 individual who attempts to violate 18 U.S.C. Section 2251(a),  
7 which makes it a crime to sexually exploit a minor, shall be  
8 punished in accordance with law."

9 In order to prove that the defendant attempted to  
10 sexually exploit a minor, the government must prove beyond a  
11 reasonable doubt: First, that the defendant intended to  
12 commit the crime of sexual exploitation of a minor; and  
13 second, that the defendant willfully took some action that was  
14 a substantial step in an effort to bring about or accomplish  
15 the crime.

16 To determine whether the government has proven  
17 beyond a reasonable doubt that the defendant attempted to  
18 sexually exploit a minor, I will first explain to you the law  
19 of attempt.

20 Mere intention to commit a specific crime does not  
21 amount to an attempt. In order to convict the defendant of an  
22 attempt, you must find beyond a reasonable doubt that the  
23 defendant intended to commit the crime charged, and that he  
24 took some action which was a substantial step toward the  
25 commission of the crime.



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1           In determining whether the defendant's actions  
2 amounted to a substantial step toward the commission of the  
3 crime, it is necessary to distinguish between mere  
4 preparation, on the one hand, and the actual doing of the  
5 criminal deed on the other. Mere preparation, which may  
6 consist of planning the offense, or of devising, obtaining or  
7 arranging a means for its commission, is not an attempt,  
8 although some preparations may amount to an attempt. The acts  
9 of a person who intends to commit a crime will constitute an  
10 attempt where the acts themselves clearly indicate an intent  
11 to willfully commit the crime, and where the acts are a  
12 substantial step in a course of conduct planned to culminate  
13 in the commission of the crime.

14           In determining whether the defendant took "a  
15 substantial step" towards the commission of a crime, you  
16 should consider all of the evidence admitted in the case  
17 concerning the defendant and the alleged commission of the  
18 crime.

19           Factual or legal impossibility is not a defense to a  
20 charge of attempting to commit a crime if the crime could have  
21 been committed had the relevant factual or legal circumstances  
22 been as the defendant believed them to be. In other words, a  
23 person is guilty of an attempt to commit a crime if, acting  
24 with the kind of culpability otherwise required for the  
25 commission of the crime, he intentionally engages in conduct

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1 which would constitute the crime if the relevant factual and  
2 legal circumstances were as he believed them to be.

3 I will now explain to you the crime of sexual  
4 exploitation of a minor, which is the crime that the defendant  
5 is charged with attempting to commit. There are three  
6 elements to this crime:

7 First, that Daniel, who is identified in the  
8 indictment as John Doe I, Ellie, who is identified in the  
9 indictment as John Doe II, or Leah, who is identified in the  
10 indictment as Jane Doe I, was under the age of 18.

11 Second, that the defendant used or employed or  
12 persuaded or induced or enticed or coerced Daniel, Ellie or  
13 Leah to take part in sexually explicit conduct for the purpose  
14 of producing or transmitting a visual depiction of that  
15 conduct.

16 And third, that the visual depiction was mailed or  
17 actually transported or transmitted in or affecting interstate  
18 or foreign commerce or using a facility in interstate and  
19 foreign commerce or produced using materials that had been  
20 mailed, shipped, or transported in and affecting interstate  
21 and foreign commerce.

22 As to the first element of sexual exploitation of a  
23 minor, the government must prove beyond a reasonable doubt  
24 that at least one of the intended victims, Daniel, Ellie or  
25 Leah, was less than 18 years old at the time of the acts

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1 alleged in the indictment. The government does not need to  
2 prove that the defendant knew that Daniel, Ellie or Leah was  
3 less than 18 years old.

4 As to the second element of sexual exploitation of a  
5 minor, the government must prove beyond a reasonable doubt  
6 that the defendant used or employed or persuaded or induced or  
7 enticed or coerced Daniel, Ellie or Leah to take part in  
8 sexually explicit conduct for the purpose of producing or  
9 transmitting a visual depiction of that conduct.

10 The words "used," "employed," "persuaded,"  
11 "induced," "enticed" and "coerced" are words of common usage,  
12 and I instruct you to interpret these words by using your own  
13 common sense. The words "persuade," "induce" and "entice"  
14 are, in effect, synonyms that convey the idea of leading or  
15 moving another person by persuasion or influence as to some  
16 action, state of mind, et cetera, or to bring about, produce  
17 or cause. The word "coerce" means to compel by force and  
18 intimidation or authority, without regard for individual  
19 desire or volition.

20 A "visual depiction" includes a digitally recorded  
21 photograph or video.

22 "Sexually explicit conduct" means actual or  
23 simulated sexual intercourse, including genital-genital,  
24 oral-genital, anal-genital or oral-anal, whether between  
25 persons of the same or opposite sex; bestiality; masturbation;

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1 sadistic or masochistic abuse or lascivious exhibition of the  
2 genitals or pubic area of any person.

3           The term "lascivious exhibition" means a depiction  
4 that displays to bring to view or attract others to the  
5 genitals or pubic area of minors in order to excite  
6 lustfulness or sexual stimulation in the viewer. Not every  
7 exposure of the genitals or pubic area constitutes lascivious  
8 exhibition. In deciding whether a particular visual depiction  
9 constitutes a lascivious exhibition, you should consider the  
10 following questions: Whether the focal point of the visual  
11 depiction is of the minor's genitals or pubic area or whether  
12 there is some other focal area; whether the setting of the  
13 visual depictions makes it appear to be sexually suggestive,  
14 for example, in a place or pose generally associated with  
15 sexual activity; whether the minor is displayed in an  
16 unnatural pose or in inappropriate attire, considering the age  
17 of the minor; whether the minor is fully or partially clothed  
18 or nude, although nudity is not in and of itself lascivious;  
19 whether the visual depiction suggests sexual coyness or a  
20 willingness to engage in sexual activity; whether the visual  
21 depiction was intended or designed to elicit a sexual response  
22 from the viewer.

23           It is not required that a particular visual  
24 depiction involve all of the factors that I have just listed  
25 for you. The importance you give to any one factor is up to

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1 you to decide. While the government must prove that the  
2 defendant acted with the purpose of producing a visual  
3 depiction of sexually explicit conduct, the government does  
4 not need to prove that the visual depiction of that conduct  
5 was actually produced.

6           The third element of sexual exploitation of a minor  
7 that the government must prove beyond a reasonable doubt is  
8 that the depiction was transported or transmitted in or  
9 affecting interstate or foreign commerce or using a facility  
10 of interstate or foreign commerce or produced using materials  
11 that had been mailed, shipped and transported in and affecting  
12 interstate or foreign commerce. If a visual depiction of  
13 sexually explicit conduct, as I have defined that term, is  
14 stored on a digital camera or other type of recording device  
15 and the camera or recording device crosses from one state to  
16 another, then that is sufficient to satisfy the interstate  
17 commerce element.

18           Furthermore, it is sufficient to satisfy the  
19 interstate or foreign commerce element if the visual depiction  
20 of sexually explicit conduct is recorded or stored on a device  
21 that was made either outside of the state of New York or in a  
22 foreign country. I instruct you that the parties have  
23 stipulated that the camera seized from the defendant on March  
24 19, 2013 was manufactured outside the United States.

25           Whether or not a minor consented to engage in

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1 sexually explicit conduct is irrelevant, as the consent or  
2 voluntary participation of a minor is not a defense to the  
3 charge.

4           To prove that the defendant attempted to sexually  
5 exploit a minor, the government does not need to prove that a  
6 visual depiction of sexually explicit conduct, as I have  
7 already defined these terms, was actually produced or  
8 transmitted. Nor does the government need to prove that the  
9 visual depiction was actually transmitted in or affecting  
10 interstate commerce. The government need not prove that the  
11 defendant actually committed the substantive crime of sexual  
12 exploitation of a minor. The government must prove beyond a  
13 reasonable doubt: That the defendant intended to commit the  
14 crime of sexual exploitation of a minor; and that the  
15 defendant willfully took some action that was a substantial  
16 step in an effort to bring about or accomplish the crime.

17           If you find that the government has proven each of  
18 the two elements of the crime alleged in Count Three beyond a  
19 reasonable doubt, you should find the defendant guilty on  
20 Count Three. If the government fails to prove any one  
21 element, you must find the defendant not guilty as to Count  
22 Three.

23           The fourth count of the indictment charges the  
24 defendant with attempted coercion and enticement of a minor to  
25 engage in illegal sexual activity. Count Four reads as

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1 follows: "On or about and between February 1, 2013 and March  
2 19, 2013, both dates being approximate and inclusive, within  
3 the Eastern District of New York and elsewhere, the defendant  
4 Bebars Baslan, using facilities and means of interstate and  
5 foreign commerce, to wit: a telephone, did knowingly and  
6 intentionally attempt to persuade, induce, entice and coerce  
7 one or more individuals who had not attained the age of 18  
8 years, to wit: John Doe 1, John Doe 2 and Jane Doe 1 to engage  
9 in sexual activity for which a person can be charged with a  
10 criminal offense, to wit: criminal sex act in the first  
11 degree, in violation of Section 130.50 of the New York Penal  
12 Law and sexual assault, in violation of Section 2C:14-2(b) of  
13 the New Jersey Code of Criminal Justice."

14 Count Four charges the defendant with violating  
15 Section 2422(b) of Title 18 of the United States Code. That  
16 section provides, in relevant part: "Whoever, using the mail  
17 or any facility or means of interstate or foreign commerce,  
18 knowingly persuades, induces, entices, or coerces any  
19 individual who has not attained the age of 18 years, to engage  
20 in any sexual activity for which any person can be charged  
21 with a criminal offense, or attempts to do so shall be  
22 punished in accordance with law."

23 In order to prove the defendant guilty of Attempted  
24 Coercion and Enticement of a Minor to Engage in Illegal Sexual  
25 Activity, the government must prove each of the following

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1 elements beyond a reasonable doubt: First, that the defendant  
2 intended to commit the crime of Coercion and Enticement of a  
3 Minor to Engage in Illegal Sexual Activity; and second, that  
4 the defendant did some act that was a substantial step in an  
5 effort to bring about or accomplish the crime.

6 I have already instructed you on the law of attempt,  
7 and you should apply those instructions here. I will now  
8 define for you the elements of the crime of Coercion and  
9 Enticement of a Minor to Engage in Illegal Sexual Activity.

10 First, that on or about the dates set forth in the  
11 indictment, the defendant used a facility or means of  
12 interstate or foreign commerce, that is, a telephone; second,  
13 that the defendant used the telephone to unlawfully, willfully  
14 and knowingly attempt to persuade or induce or entice or  
15 coerce a person whom the defendant believed to be under 18  
16 years of age to engage in any sexual activity, specifically,  
17 Daniel, Ellie or Leah; and third, that if the sexual activity  
18 had occurred, the defendant could have been charged with a  
19 criminal offense under either New York State or New Jersey  
20 State law.

21 The first element that the government must prove  
22 beyond a reasonable doubt is that the defendant used a  
23 facility or means of interstate or foreign commerce,  
24 specifically, a telephone. Transmissions of communications by  
25 means of a telephone constitute the use of a facility of



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1 interstate commerce, regardless of whether the communication  
2 actually crossed a state line. However, you must find beyond  
3 a reasonable doubt that the specific communication or  
4 communications was actually transmitted by a telephone.

5 The second element that the government must prove  
6 beyond a reasonable doubt is that the defendant used a  
7 telephone to unlawfully, willfully and knowingly persuade,  
8 induce, coerce or entice a person whom the defendant believed  
9 to be under the age of 18 years to engage in any sexual  
10 activity. I have already instructed you on the meanings of  
11 the terms "willfully" and "knowingly."

12 I instruct you that the crime of using a facility of  
13 interstate commerce to attempt to persuade, induce, entice or  
14 coerce a minor to engage in a sexual act is completed when the  
15 defendant uses a facility of interstate commerce to attempt to  
16 persuade, induce, entice or coerce a person he believed to be  
17 under 18 years of age to engage in any sexual activity.

18 The person with whom the defendant was communicating  
19 does not need to be a minor in order for the defendant to be  
20 guilty of the charge. It is sufficient if the government  
21 proves that the defendant was communicating with an adult  
22 intermediary such as a parent or relative for the purpose of  
23 leading the person he believed to be under the age of 18 to  
24 participate in sexual activity. Nor is it a defense to the  
25 crime that the adult intermediary with whom the defendant was

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1 communicating never intended to allow a minor to be persuaded,  
2 induced, enticed or coerced to engage in any sexual activity.  
3 The government has met its burden of proof so long as it  
4 proves beyond a reasonable doubt that the defendant was  
5 communicating with an adult intermediary whom the defendant  
6 believed would cause, lead or facilitate the minor to engage  
7 in sexual activity.

8 In addition, the sexual act does not need to have  
9 been completed in order to find the defendant guilty of the  
10 charge. It is not a defense to the charge that, as a result  
11 of circumstances unknown to the defendant, he was unable to  
12 complete the intended sexual act or acts.

13 The third element that the government must prove  
14 beyond a reasonable doubt is that if the sexual activity had  
15 occurred, the defendant could have been charged with a  
16 criminal offense under New York State law or New Jersey State  
17 law.

18 It is a crime under New York State law for a person  
19 to engage in oral sexual conduct or anal sexual conduct with  
20 another person who is less than 11 years old.

21 Under New York State law, the following definitions  
22 apply: "Oral sexual conduct" means conduct between persons  
23 consisting of contact between the mouth and the penis, the  
24 mouth and the anus, or the mouth and the vulva or vagina.  
25 "Anal sexual conduct" means conduct between persons consisting

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1 of contact between the penis and anus.

2 Under Section 2C:14-2(b) of the New Jersey Code of  
3 Criminal Justice, an actor is guilty of sexual assault if he  
4 commits an act of sexual contact with a victim who is less  
5 than 13 years old and the actor is at least four years older  
6 than the victim.

7 Under New Jersey law, the following definition  
8 applies: "Sexual contact" means an intentional touching by  
9 the victim or actor, either directly or through clothing, of  
10 the victim's or actor's intimate parts for the purpose of  
11 degrading or humiliating the victim or sexually arousing or  
12 sexually gratifying the actor. Sexual contact of the actor  
13 with himself must be in view of the victim whom the actor  
14 knows to be present.

15 With regard to the third element of the offense --  
16 that if the sexual activity had occurred, the defendant could  
17 have been charged with a criminal offense under New York State  
18 law or New Jersey State law -- you need only find that the  
19 activity would have violated any one of the aforementioned  
20 laws.

21 If you find that the government has proven each of  
22 the elements of the crime alleged in Count Four beyond a  
23 reasonable doubt, you should find the defendant guilty on  
24 Count Four. If the government fails to prove any one element,  
25 you must find the defendant not guilty as to Count Four.

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1 Count Two of the indictment charges the defendant  
2 with Conspiracy to Sexually Exploit a Child. Count Two reads  
3 as follows: "On or about and between February 1, 2013 and  
4 March 19, 2013, both dates being approximate and inclusive,  
5 within the Eastern District of New York and elsewhere, the  
6 defendant Bebars Baslan, together with others, did knowingly  
7 and intentionally conspire to employ, use, persuade, induce,  
8 entice and coerce a minor, to wit: John Doe 1, Jane Doe 1 and  
9 John Doe 2, individuals whose identities are known to the  
10 Grand Jury, to engage in sexually explicit conduct for the  
11 purpose of producing one or more visual depictions of such  
12 conduct, knowing and having reason to know that such visual  
13 depictions would be transported using any means and facility  
14 of interstate and foreign commerce, and in and affecting  
15 interstate and foreign commerce, and which visual depictions  
16 were to be produced using materials that had been mailed,  
17 shipped and transported in and affecting interstate and  
18 foreign commerce, by any means, to wit: one or more digital  
19 cameras, contrary to Title 18, United States Code, Section  
20 2251(a)."

21 Count Two of the indictment charges the defendant  
22 with violating Section 2251(e) of Title 18 of the United  
23 States Code. That section provides, in relevant part: "Any  
24 individual who conspires to violate 18 U.S.C. 2251(a), which  
25 makes it a crime to sexually exploit a minor, shall be

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1 punished in accordance with law."

2 In my instruction as to Count Three, I have already  
3 instructed you on all the elements of the substantive offense  
4 of sexual exploitation of a minor. I will now instruct you on  
5 what the government must prove to show that the defendant  
6 conspired to sexually exploit a minor, in violation of 18  
7 United States Code, Section 2251(e).

8 The essence of the charge of conspiracy is an  
9 understanding or agreement between or among two or more  
10 persons that they will act together to accomplish a common  
11 objective that they know is unlawful. You should understand  
12 that a conspiracy is an offense separate from the commission  
13 of any offense that may have been committed pursuant to the  
14 conspiracy. That is because the formation of a conspiracy, of  
15 a partnership for criminal purposes, is in and of itself a  
16 crime. Thus, if a conspiracy exists, even if it should fail  
17 in achieving its purpose, it is still punishable as a crime.

18 In order to prove the defendant guilty of Conspiracy  
19 to Sexually Exploit a Child, the government must prove each of  
20 the following three elements beyond a reasonable doubt:

21 First, that two or more persons, other than the person  
22 referred to as Jack, conspired or agreed; second, that they  
23 knowingly and willfully conspired or agreed and that the  
24 defendant knowingly and willfully was or became a member of  
25 the conspiracy; third, that they conspired or agreed to commit

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1 the unlawful act charged in the indictment -- in this case,  
2 the sexual exploitation of a minor -- or, in other words, that  
3 the objective of the conspiracy was to commit that unlawful  
4 act.

5 Let me start with the first and second elements that  
6 the government must prove beyond a reasonable doubt. The  
7 conspiracy is a combination or agreement of two or more  
8 persons to accomplish an unlawful purpose. While conspiracy  
9 involves an agreement to violate the law, the government need  
10 not prove that the defendant entered into an express or formal  
11 agreement, or that he stated, orally or in writing, what the  
12 scheme was or how it was to be accomplished. It is sufficient  
13 to show that he came to a mutual understanding with another or  
14 others to bring about an unlawful act. You may infer such an  
15 agreement -- or conspiracy -- from the circumstances and  
16 conduct of the parties, since ordinarily a conspiracy is  
17 secret.

18 The second element of conspiracy that the government  
19 must prove beyond a reasonable doubt is that the defendant was  
20 or became a member. That is, if you find that a conspiracy  
21 existed, you must determine whether he participated in the  
22 conspiracy willfully and with knowledge of its unlawful  
23 purpose and in furtherance of its unlawful purpose. A  
24 person's knowledge is a matter of inference from the facts  
25 proved. In that connection, I instruct you that to become a

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1 member of the conspiracy, the defendant need not have known  
2 the identities of every member, nor need he have been apprised  
3 of all of their activities. Moreover, the defendant need not  
4 have been fully informed as to all of the details, or the  
5 scope, of the conspiracy in order to justify an inference of  
6 knowledge on his part.

7           The extent or duration of the defendant's  
8 participation has no bearing on the issue of the defendant's  
9 guilt. An equal role is not what the law requires. If you  
10 find that the conspiracy existed and if you further find that  
11 the defendant participated in it knowingly and willfully, the  
12 extent or degree of his participation is not material.  
13 Moreover, it is not required that a person be a member of the  
14 conspiracy from its very start.

15           I want to caution you, however, that the defendant's  
16 mere presence at the scene does not, by itself, make him a  
17 member of the conspiracy. Similarly, mere association with  
18 one or more members of the conspiracy does not automatically  
19 make the defendant a member. A person may know or be friendly  
20 with a criminal without being a criminal himself. Mere  
21 similarity of conduct or the fact that individuals may have  
22 assembled together and discussed common aims and interests  
23 does not necessarily establish proof of the existence of a  
24 conspiracy.

25           I further want to caution you that mere knowledge or

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1 acquiescence, without participation, in the unlawful plan is  
2 not sufficient to make the defendant a member of a conspiracy.  
3 The fact that the acts of the defendant merely happen to  
4 further the purposes or objectives of the conspiracy, without  
5 his knowledge, does not make the defendant a member. More is  
6 required under the law. What is necessary is that the  
7 defendant must have participated with knowledge of at least  
8 some of the purposes or objectives of the conspiracy and with  
9 the intention of aiding in the accomplishment of those  
10 unlawful ends.

11 In sum, the defendant, with an understanding of the  
12 unlawful character of the conspiracy, must have intentionally  
13 engaged, advised or assisted in it for the purpose of  
14 furthering the illegal undertaking. He thereby becomes a  
15 knowing and willing participant in the unlawful agreement --  
16 that is to say, a conspirator.

17 The third element that the government must prove  
18 beyond a reasonable doubt is that the conspiracy was to commit  
19 an unlawful act, in this case, the sexual exploitation of a  
20 minor. The government need not prove that the defendant  
21 actually committed sexual exploitation of a minor. Rather,  
22 what the government must prove beyond a reasonable doubt is  
23 that the purpose of the conspiracy was to commit sexual  
24 exploitation of a minor.

25 If you find that the government has proven each of



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1 the elements of the crime alleged in Count Two beyond a  
2 reasonable doubt, you should find the defendant guilty on  
3 Count Two. If the government fails to prove any one element,  
4 you must find the defendant not guilty as to Count Two.

5 I will now instruct you on some general principles  
6 you will use in your deliberations.

7 In deciding whether or not the government has proven  
8 beyond a reasonable doubt the crimes I have described to you,  
9 you must weigh the evidence before you. You are the sole  
10 judges of the credibility of the witnesses and the weight  
11 their testimony deserves. The assumption that a witness will  
12 speak the truth may be dispelled by the appearance and conduct  
13 of the witness, by the manner in which the witness testifies,  
14 by the character of the testimony given, or by evidence  
15 contrary to the testimony given.

16 You should carefully scrutinize all the testimony  
17 given, the circumstances under which each witness testified,  
18 and other matters in evidence which tend to indicate whether a  
19 witness is worthy of belief. Your determination of the issue  
20 of credibility very largely must depend upon the impression  
21 that a witness makes upon you as to whether or not he or she  
22 is telling the truth or giving you an accurate version of what  
23 occurred.

24 Consider each witness's motive and state of mind,  
25 possible partisanship in the case, and demeanor and manner

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1 while on the stand. Consider particularly the relationship  
2 each witness bears to either side of the case, the nature of  
3 that relationship, the manner in which each witness might be  
4 affected by the verdict, and the extent to which, if at all,  
5 each witness is either supported or contradicted by other  
6 evidence in the case.

7           The question really is, how did the witness impress  
8 you? Did the witness's version appear straightforward and  
9 candid or did the witness try to hide some of the facts? Is  
10 there a motive of any kind to testify falsely or truthfully or  
11 to shade the testimony offered? In other words, what you try  
12 to do, in plain English, is to size the person up, just as you  
13 would do in any important matter when you are undertaking to  
14 determine whether or not a person is being truthful, candid,  
15 straightforward, or otherwise reliable.

16           If you believe that a witness has made an earlier  
17 statement that conflicts with his or her trial testimony, you  
18 should consider whether the witness purposely made a false  
19 statement or whether it was an innocent mistake; whether the  
20 inconsistency concerns an important fact or whether it had to  
21 do with a small detail; and whether the witness had an  
22 explanation for the inconsistency that appealed to your common  
23 sense.

24           You have heard the testimony of law enforcement  
25 officials. The fact that a witness may be employed as a law

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1 enforcement official does not mean that his or her testimony  
2 is necessarily deserving of more or less consideration or  
3 greater or lesser weight than that of an ordinary witness.  
4 You should evaluate such testimony in the same manner as you  
5 would the testimony of any other witness.

6 Keep in mind that the law does not require the  
7 government to call as witnesses all persons who may have been  
8 present at any time or place involved in the case, or who may  
9 appear to have some knowledge of the matters in issue at this  
10 trial. Nor does the law require the government to produce as  
11 exhibits all papers and other items mentioned during the  
12 course of the trial.

13 In a criminal case, the defendant has no duty to  
14 testify or come forward with any other evidence. He may, of  
15 course, choose to take the witness stand on his own behalf.  
16 In this case, the defendant, Bebars Baslan, has chosen to  
17 testify. As with any other witness, you may take his interest  
18 into account in evaluating his credibility as a witness. You  
19 should evaluate and examine his testimony as you would the  
20 testimony of any witness with an interest in the outcome of  
21 the case. However, the government always has the burden of  
22 proving the charges against the defendant beyond a reasonable  
23 doubt. The fact that the defendant has chosen to take the  
24 stand and testify on his own behalf does not, in any manner,  
25 shift the burden of proof from the government to him.

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1           You have heard reputation and opinion evidence from  
2 Maryana Kowal, the other witness for the defense, about the  
3 defendant's good character and character trait for  
4 truthfulness. You should consider character evidence together  
5 with and in the same way as all the other evidence in the  
6 case.

7           You have heard testimony that the defendant Bebars  
8 Baslan made statements following his arrest on March 19, 2013  
9 to FBI Special Agent Aaron Spivack and at a proffer session in  
10 October 2013 to, among others, FBI Special Agent John  
11 Robertson.

12           You must decide whether the defendant actually made  
13 the statements as described in the agent's testimony and, if  
14 so, how much weight to give to the statements. In making  
15 these decisions, you should consider all of the evidence,  
16 including the defendant's personal characteristics and  
17 circumstances under which the statement may have been made, as  
18 well as the defendant's testimony about those circumstances.

19           During the trial, typed transcripts were made  
20 available to you. These documents contained an interpretation  
21 of what was said on the recordings. These documents were  
22 given to you as an aid to assist you in listening to the  
23 tapes. They are not evidence. When the tapes were played, I  
24 advised you to listen very carefully to the tapes themselves.  
25 You alone should interpret the recordings based on what you

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1 heard. If you think you heard something different from what  
2 appeared on a transcript, then what you heard is controlling.  
3 If you cannot determine from the tape that particular words  
4 were spoken, you must disregard the transcripts insofar as  
5 those words are concerned.

6 The statements, comments, arguments, demeanor and  
7 tone of voice of the attorneys do not constitute evidence.  
8 Nor does anything I have said or done.

9 Your recollection governs. Nobody else's. Not the  
10 Court's -- if I have made reference to the testimony -- and  
11 not counsel's recollection. It is your recollection that must  
12 govern during your deliberations. If necessary during those  
13 deliberations, you may request a reading from the trial  
14 transcript that may refresh your recollection.

15 Please, as best you can, try to be as specific as  
16 possible in your request for read-backs; in other words, if  
17 you are interested only in a particular part of a witness's  
18 testimony, please indicate that to us. It may take some time  
19 for us to locate the testimony in the transcripts, so please  
20 be patient. And, as a general matter, if there is ever a  
21 delay in responding to a jury note, please understand there is  
22 a reason for it. None of us goes anywhere. As soon as a jury  
23 note is delivered to the Court by the Marshal, we turn our  
24 attention to it immediately. If you have any questions about  
25 the applicable law and you want a further explanation from me,

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1 or if you want to see any or all of the exhibits, send me a  
2 note.

3 The attorneys in summing up have asked you to draw  
4 certain inferences from the evidence in this case. Any  
5 inference you draw must be reasonably based on the evidence,  
6 and you may infer only such facts that your reason and common  
7 sense lead you to believe follow from the evidence. You are  
8 not to engage in speculation based on matters that are not in  
9 evidence.

10 You are entitled to your own opinions but you should  
11 exchange views with your fellow jurors and listen carefully to  
12 each other. Do not hesitate to change your opinion if you are  
13 convinced that another opinion is correct. But each of you  
14 must make your own decision.

15 In a few minutes, I will supply you with several  
16 copies of my instructions. If you refer to these  
17 instructions, keep in mind that you should consider them as a  
18 whole. Each part of these instructions is important in your  
19 deliberations. And, most importantly, do not let my giving  
20 you my instructions discourage you from requesting further  
21 instructions or clarification from the Court.

22 Any verdict you reach must be unanimous. That is,  
23 with respect to each count, you must all agree as to whether  
24 your verdict is guilty or not guilty.

25 When you retire to the jury room, you will also be

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1 given a verdict form which may well be self-explanatory.  
2 Needless to say, if you have any questions about the verdict  
3 form, do not hesitate to ask the Court for further  
4 instructions. When you are ready to report your verdict,  
5 check the verdict sheet carefully so that it accurately  
6 reflects the jury's verdict, and bring it to the courtroom  
7 when summoned by the Court.

8           If you wish during your deliberations to communicate  
9 with the Court, for any reason, send me a note through the  
10 Marshal. No member of the jury should ever attempt to  
11 communicate with the Court by any means other than a signed  
12 writing; and the Court will never communicate with any member  
13 of the jury on any subject touching the merits of the case,  
14 other than in writing, or, more likely than not, orally here  
15 in open court.

16           You will not discuss this case with anyone outside  
17 the jury room. And that includes your fellow jurors. You  
18 will only discuss the case when all 12 deliberating jurors are  
19 together, in the jury room, with no one else present, behind  
20 the closed door. At no time is there to be any discussion  
21 about the merits of the case, period.

22           In order that your deliberations may proceed in an  
23 orderly fashion, you should have a foreperson. Traditionally,  
24 juror number one acts as foreperson. If juror number one  
25 prefers not to serve in that role, you can choose a foreperson

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1 however you deem appropriate, such as by asking for a  
2 volunteer. The foreperson's vote is entitled to no greater  
3 weight than that of any other juror.

4 Bear in mind also that you are not to reveal to any  
5 person -- not even to the Court -- how the jury stands  
6 numerically on the question of whether the defendant is guilty  
7 or not guilty until after you have reached a unanimous verdict  
8 on all counts for the defendant. At that time, you should  
9 simply send me a note saying, "We have reached our verdict."  
10 You will be summoned to the courtroom and the Clerk of the  
11 Court will take the verdict.

12 Your oath sums up your duty -- and that is, without  
13 fear or favor to any person, you will well and truly try the  
14 issues before these parties according to the evidence given to  
15 you in court and the laws of the United States.

16 THE COURT: Thank you, Mike. Do either counsel wish  
17 to address the Court at sidebar?

18 MR. SMITH: Yes, Your Honor.

19 (Continued on the following page.)  
20  
21  
22  
23  
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25



SIDEBAR CONFERENCE

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1 (Sidebar conference.)

2 THE COURT: Yes, sir.

3 MR. SMITH: Mr. VanRiper certainly did an excellent  
4 job. He missed one word in the "No Discussion," which is on  
5 page 31. He said: "At no time is there to be any discussion  
6 about the merits of the case." He intended to say: "At no  
7 other time."

8 THE COURT: I'll have him repeat it, repeat the  
9 whole thing. Okay? Anything else? Mr. Savitt?

10 MR. SAVITT: No. Thank you, Your Honor.

11 MR. SMITH: Thank you, Judge.

12 (End of sidebar conference.)

13 (Continued on the following page.)

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1 THE COURT: It was brought to my attention that Mike  
2 just dropped a word, so we're going to repeat a very limited  
3 instruction to you. Go ahead, Mike.

4 THE LAW CLERK: You will not discuss this case with  
5 anyone outside the jury room. And that includes your fellow  
6 jurors. You will only discuss the case when all 12  
7 deliberating jurors are together, in the jury room, with no  
8 one else present, behind the closed door. At no other time is  
9 there to be any discussion about the merits of the case.

10 THE COURT: All right. Thank you, Mike. Swear the  
11 marshal.

12 COURTROOM DEPUTY: Can I ask the marshal please to  
13 come forward.

14 (Marshal sworn.)

15 THE COURT: Ladies and gentlemen, this is the court  
16 security officer and Deputy United States Marshal who will be  
17 stationed outside the jury room during your deliberations,  
18 either he or one of his colleagues. If you have any reason to  
19 communicate with the Court, simply open the door, hand him a  
20 note. He will bring it straight away to the Court, who will  
21 address it immediately with counsel and respond as quickly as  
22 we possibly can.

23 We have five alternate jurors in the back row who  
24 have been working attentively. Do you have personal  
25 belongings in the jury room? I ask you now to go with

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1 Ms. Mulqueen, retrieve those belongings and then come back to  
2 the courtroom. Do you have a verdict sheet? Have both sides  
3 seen it?

4 MR. SAVITT: Yes, sir, we have.

5 MS. DEMAS: Yes, Your Honor.

6 THE COURT: It's approved by everyone. All right,  
7 hand it to the marshal, if you would. Just take a moment  
8 while we clear the jury room of their belongings, I suspect  
9 only a moment.

10 (Pause.)

11 THE COURT: All right. If the alternate jurors  
12 would be seated and remain with me ever so briefly. Ladies  
13 and gentlemen of the jury, you may now retire and consider  
14 your verdict.

15 (The jury retired to deliberate at 10:28 a.m.)

16 THE COURT: Please be seated, everyone. Ladies, I  
17 know it can be frustrating to be with us, sit and listen  
18 attentively to the testimony and at the very last moment be  
19 separated from your colleagues on the jury.

20 I hope you understand the need for us to impanel  
21 alternate jurors. Sometimes, because of emergencies  
22 unforeseen, extended illnesses and so forth, we have to resort  
23 to a number of alternate jurors. Indeed, in this case, we did  
24 almost at the outset of the trial.

25 So we thank you for your service. I'm not going to

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1 formally excuse you at the moment, because the trial continues  
2 with the jury's deliberations. And for that reason, I'll ask  
3 you to continue to abide by my instruction not to discuss the  
4 case with anyone until this jury completes its work. At that  
5 point, you are free to discuss the case with anyone you choose  
6 to, or not, as you decide. Speaking on behalf of counsel, I'm  
7 sure your wishes in that regard will be respected.

8           So we ask you to step downstairs to the second floor  
9 so that an accurate record of your service to the court is  
10 maintained by our clerk. Other than that, you are free to  
11 leave the building and you'll be notified if for any reason  
12 your continued service is needed. Thank you again for your  
13 time. Ellie will be here. Mike, would you just escort them  
14 out to the hall while we wait for Ellie's return.

15           Thank you again, ladies.

16           (Alternate jurors exit the courtroom.)

17           THE COURT: All right. Well, if you're going to  
18 leave the room, make sure that Ellie knows exactly where and  
19 how to reach you. And as soon as we hear any word, obviously,  
20 we'll be in touch with you. Anything else?

21           MR. SMITH: No, Your Honor.

22           MS. DEMAS: No, Your Honor.

23           THE COURT: All right. To be continued then. Thank  
24 you.

25           (Recess.)

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1 (In open court outside the presence of the jury.)

2 (The defendant enters the courtroom.)

3 (Court Exhibits 1, 2 and 3 received in evidence.)

4 THE COURT: I take it Court Exhibit 1 was the copy  
5 of the charge?

6 COURTROOM DEPUTY: Yes. Court Exhibit 1 is the  
7 charge; and Court Exhibit 2 is the jury note.

8 THE COURT: Court Exhibit 2 is our first jury note.  
9 I have some questions about it. As to the summation of Mr.  
10 Savitt, as eloquent as it was, they're not going to get it,  
11 because it's not evidence in the case.

12 MR. SAVITT: Understood.

13 THE COURT: The binders, those are transcripts,  
14 which technically are not evidence, but I have no objection to  
15 them seeing them as long as I remind them that they are not  
16 evidence and that the tapes themselves are, in fact,  
17 available.

18 Testimony of the -- I assume they mean of the  
19 defendant. Is that in printed form that we can provide, in  
20 clean copy, or do we have to hear it in court?

21 MS. DEMAS: Your Honor, we have not yet received a  
22 transcript from yesterday from the court reporter. I believe  
23 your deputy made an effort to obtain it.

24 THE COURT: Any idea where that is? While we're  
25 looking into that, what are the five CDs?

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1 MR. SMITH: I think that refers to Government  
2 Exhibits 1 through 5, which were the CDs of the audio  
3 recordings.

4 THE COURT: I see. Do we have the capability of  
5 giving them that in the jury room or do they have to hear it  
6 here?

7 MS. DEMAS: Your Honor, if they have a device on  
8 which to play it, we can give it to them in the jury room.

9 THE COURT: Is it safe? They couldn't access any  
10 other information?

11 MS. DEMAS: One of the exhibits is a video slash --  
12 includes child pornography, but they are entitled -- it's in  
13 evidence.

14 THE COURT: I understand that. If we played all  
15 those CDs here in the courtroom, how much time are we talking  
16 about?

17 MR. SMITH: We played approximately three hours'  
18 worth of audio.

19 THE COURT: So what can we do? Is it possible to  
20 provide it to them?

21 MS. DEMAS: Yes.

22 THE COURT: The testimony of the witness who  
23 discussed the Lolita files, I forget the gentleman's name.

24 MR. SMITH: That was Special Agent Phung.

25 THE COURT: Do we have that in printed form?

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1 MR. SMITH: We have that in printed form. We're  
2 pulling a copy of that.

3 MR. SAVITT: She's no gentleman, Your Honor. That's  
4 a female agent.

5 THE COURT: Right. And any objection if we clean it  
6 up and send it in? I don't know that there's anything we have  
7 to clean out of it.

8 MS. DEMAS: No, Your Honor. I've looked at it and I  
9 did not see anything to clean out of that testimony.

10 THE COURT: Mr. Savitt?

11 MR. SAVITT: Your Honor, I frankly have not had a  
12 chance to look at it. I accept counsel's representation, but,  
13 in the interest of caution, I'll take a quick look at it.

14 THE COURT: Please do.

15 "Properties of the audited files," what does that  
16 mean?

17 MR. SMITH: That, we don't know.

18 THE COURT: I'll ask them. 23A, B and C, we have  
19 those?

20 MS. DEMAS: Yes. Those are phone records.

21 THE COURT: And the list of charges they now have in  
22 the instructions.

23 So, all right, let's see.

24 MS. DEMAS: Your Honor, I'm sorry, I should be  
25 clear. I think it's theoretically possible to give the jury

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1 access to the CDs, but we would need to get a laptop from our  
2 office that doesn't have anybody else's information on it, so  
3 that could take some time. I mean, I will make an effort to  
4 go over there now and find out if they can give us a clean  
5 laptop to play it on.

6 THE COURT: All right. Otherwise, we have three  
7 hours of it here in the courtroom.

8 MR. SMITH: I mean, they may only be interested in  
9 certain portions, and we can certainly ask them if there are  
10 things that they specifically want to listen to. We could  
11 likely identify things with some speed.

12 THE COURT: Okay. And testimony of -- we can  
13 provide them with the testimony of the witness who discussed  
14 the Lolita files. Eventually, we'll get the defendant's  
15 testimony.

16 Have we found out where the transcript stands,  
17 Ellie?

18 COURTROOM DEPUTY: She's going to bring it up.

19 THE COURT: Oh, she's going to bring it up?

20 COURTROOM DEPUTY: Yes. She's printing it out.  
21 She's going to bring it up.

22 THE COURT: We're going to have that momentarily.  
23 You can do the same thing there, read it, make sure it's  
24 clean, as we say, and we can provide it to them. I'll ask  
25 about number 6. Number 7, there's no dispute.



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1 And the second note I assume involves Exhibit 55,  
2 was it?

3 MR. SMITH: Yes.

4 THE COURT: Which you have available?

5 MR. SMITH: We have that.

6 THE COURT: Okay. So we have 55, 23A, B and C, the  
7 transcripts.

8 MR. SAVITT: Your Honor, I'll put it on the record  
9 anyhow. I just want to be sure, if my memory serves me  
10 correctly, that the five CDs that we're talking about relate  
11 exclusively to the Massre recordings and to nothing else.

12 MR. SMITH: They're audio recordings that were  
13 consensual recordings made by the government's informant.

14 THE COURT: Okay. Bring them in, Ellie.

15 COURTROOM DEPUTY: Certainly.

16 MS. DEMAS: I'm sorry, Your Honor, did you want us  
17 to be able to provide the jury with more than one transcript  
18 binder or will one suffice? If we need to get them all, I'll  
19 go back to the office.

20 THE COURT: I'd get 12 of them.

21 MS. DEMAS: Twelve? Okay.

22 THE COURT: Do you have one now?

23 MS. DEMAS: I do have one now, and we're sending the  
24 intern to get the rest.

25 THE COURT: Well, give us the one you have and we'll

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1 send that in.

2 (Jury enters the courtroom at 11:25 a.m.)

3 THE COURT: We have a couple of notes and I'd like  
4 to review them with you. Your first request involves eight  
5 numbered items, and I'll tick them off one at a time and  
6 respond accordingly.

7 The first, you asked for the summation for the  
8 defense. As I told you throughout the trial, the statements  
9 of counsel are not evidence and it will not be provided to  
10 you.

11 Transcript binders. We have -- we will provide  
12 those binders to you. And first, we're going to provide you  
13 with one. We are retrieving 11 more and they will be sent in  
14 to you. Please do bear in mind the admonition I gave you at  
15 the time we first addressed the subject of transcripts and,  
16 indeed, I've repeated it in my final instructions. The  
17 transcripts themselves are not evidence. The evidence is on  
18 the tapes and they are available to you should you so request.  
19 Indeed, it appears that you have in another request.

20 You asked for the testimony for the defendant. That  
21 will be -- logistically, we have to get it from the reporter,  
22 okay, review it, make sure there's nothing extraneous in  
23 there. And as soon as we've done that, we will send it in to  
24 you.

25 The five CDs you are entitled to. They're in

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1 evidence. You may recall playing them here in court involved  
2 approximately three hours of playing time. We are figuring  
3 out logistically a way of providing them to you in the  
4 confines of the jury room, okay? If that's doable, all well  
5 and good. If not, we will begin playing them here in the  
6 courtroom.

7 Now, at any time with respect to any of these items,  
8 you are in control. Okay? Let me explain to you what I mean.  
9 Juries will ordinarily ask for exhibits in sort of generic  
10 form. You may have something very specific in mind and you're  
11 not quite sure where it is, so you ask for a large body of  
12 information. Perfectly understandable. And sometimes there's  
13 simply no other way of going about it.

14 But if at any time you hear something that you were  
15 looking for, you can stop us at any time. You're in full  
16 control here. The only thing I don't want you to do is while  
17 you're here in the courtroom have any discussion about it.  
18 Okay? I'm going to ask you when you go back to talk over what  
19 I've discussed, and if you have any further questions or  
20 comments or requests, of course, you make them, but be very  
21 vigilant. Once that jury room door opens, okay, don't discuss  
22 the case. Absolutely critical.

23 Perfectly human. You're in the middle of  
24 deliberations. You've got certain questions. You hear  
25 certain information. Perfectly understandable that you should

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1 react immediately. Hold any reaction and exchange among  
2 yourselves until you get into that jury room behind the closed  
3 door.

4 So we'll do our best with the CDs and let you know  
5 how we make out.

6 The testimony of the witness regarding the Lolita  
7 files will be provided to you in short order.

8 We have a question about item 6. It requests, and I  
9 quote: "Properties of the audited files." We're not entirely  
10 sure what you're requesting. If you could try to be a little  
11 more specific so we might make an informed judgment as to what  
12 that is. But as of now, we're not entirely certain what  
13 you've requested.

14 Exhibits 23A, B and C are here and they will be  
15 provided to you immediately.

16 A list of the charges you now have in my formal  
17 instructions. You now have all the charges.

18 And finally, your second note asks for the statement  
19 created on the night of the arrest in the hotel. That I  
20 believe is a reference to Government Exhibit 55. I have it.  
21 It will be provided to you momentarily.

22 So, to review, summations of the defense will not be  
23 provided. Transcripts will. Testimony of the defendant  
24 eventually will be provided, as will the CDs once we figure  
25 out logistically whether we can give it to you in the jury

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1 room or we need to do it here in the courtroom. Testimony of  
2 the witness regarding the Lolita files will be provided.  
3 You'll consider whether you can be more specific about the  
4 request for properties of the audited files. Exhibits 23A, B  
5 and C will be provided. You have a list of the charges. And  
6 Exhibit 55 will be provided.

7 And, with that, we'll return you to the jury room.  
8 Feel free to communicate with us and as soon as we have this  
9 testimony in order, we will have it to you immediately.

10 (Jury exits courtroom at 11:31 a.m.)

11 THE COURT: Mr. Savitt, you've been through this  
12 pile of documents?

13 MR. SAVITT: Yes, Your Honor, there are some  
14 deletions that I believe are appropriate from the transcript.

15 Just for the record -- I don't think we'll have too  
16 much of an argument about this -- there's a sidebar at page  
17 499. The record itself of Agent Phung starts at 479 and it  
18 ends at -- I'm sorry.

19 THE COURT: I'm sorry. Let's -- I don't think we're  
20 on the same page. You're talking about the agent's testimony  
21 regarding the Lolita file?

22 MR. SAVITT: Yes, Your Honor.

23 THE COURT: I'm not there yet.

24 MR. SAVITT: Oh, I'm so sorry.

25 THE COURT: I'm talking about the documents we've

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1 already assembled in response to their note.

2 MR. SAVITT: Oh, that's fine, Your Honor. I  
3 apologize.

4 THE COURT: As far as the rest are concerned, go  
5 through the testimony, and if you have any -- work it out, and  
6 if you can't, I'll come back.

7 MR. SAVITT: Yes, Your Honor.

8 THE COURT: Okay? All right then.

9 MS. DEMAS: Thank you.

10 THE COURT: See you shortly.

11 At some point, we will order lunch for the jurors.  
12 When their lunch arrives, I will let you know and you can  
13 retire for your own.

14 (Recess.)

15 (Court Exhibits 4, 5 and 6 received in evidence.)

16 THE COURT: I understand that there's agreement  
17 reached with respect to the notes. I have Mr. Baslan's  
18 testimony ready for the jury. I have Court Exhibits 37 -- is  
19 it 37M, N, and Exhibit 370?

20 MR. SMITH: I believe it's 37M through 37Y.

21 THE COURT: Okay. Oh, 37Y. Thank you. And you've  
22 agreed on that.

23 This is a copy of the March 7 meeting without the  
24 video. And the reason we don't give them the video is because  
25 we don't have control over it being played in the confines of

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1 the jury room on someone's personal computer.

2 MR. SMITH: It contains child pornography, so that's  
3 exactly right, to prevent it from being copied.

4 THE COURT: So I propose that we include the  
5 following note: Ladies and gentlemen, you will note that the  
6 video portion on one of the CDs that you saw here in the  
7 courtroom is not included in the CDs now provided. You may,  
8 of course, see the full CD, including the video portion, but  
9 we would have to do that here in open court, which is easy  
10 enough to arrange.

11 MR. SAVITT: That's fine, Your Honor. Thank you.

12 MR. SMITH: I think that's fine.

13 THE COURT: Who knows? Maybe they're looking for  
14 the video portion. Better to get it than not have it, so we  
15 at least let them know it's available.

16 Oh, what about this last note?

17 MR. SMITH: We're in agreement as to the last note.  
18 That was Exhibits 37M through Y.

19 THE COURT: That's the screen shot of the Lolita  
20 files?

21 MR. SMITH: Yes.

22 MR. SAVITT: Yes, Your Honor.

23 THE COURT: Okay. If that's the case, then you  
24 don't need me. Ellie, here we go. This goes together with  
25 that. This goes with that.

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1 COURTROOM DEPUTY: So we don't need to bring them  
2 out?

3 THE COURT: No. Do we have anything outstanding?

4 MR. SMITH: No, Your Honor.

5 MS. DEMAS: No, Your Honor.

6 THE COURT: So they received the other testimony as  
7 well?

8 MS. DEMAS: Yes.

9 MR. SMITH: Yes.

10 THE COURT: Has their lunch arrived?

11 COURTROOM DEPUTY: No. I anticipate it being here  
12 at about 1:15.

13 THE COURT: Okay.

14 COURTROOM DEPUTY: In response to their note asking  
15 for six more copies of the jury charge, I have six more copies  
16 going in.

17 THE COURT: Okay. There you go. I'll see you a  
18 little later.

19 (Recess.)

20 (Court Exhibits 7, 8 and 8A and 9 received in  
21 evidence.)

22 (In open court.)

23 (The defendant enters the courtroom.)

24 THE COURT: We had a note, as you know, that merely  
25 recites: "We're ready." I guess the entire courtroom is



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1 assuming they have a verdict. Who knows, we might be  
2 surprised. I'll bring them in momentarily.

3 Just for the record, that note that we sent to the  
4 jury regarding their question about New Jersey law has been  
5 marked 8A as a Court Exhibit. It was agreed upon, was it not,  
6 gentleman?

7 MR. SMITH: Yes, Your Honor.

8 THE COURT: Mr. Savitt?

9 MR. SAVITT: Yes. I'm sorry, Your Honor.

10 THE COURT: All right then, let's bring them in.

11 (The jury enters the courtroom at 4:25 p.m.)

12 THE COURT: Sir and ladies, I have your note that  
13 reads: "We're ready." Do I assume that means you've arrived  
14 at a verdict?

15 THE FOREPERSON: Yes.

16 THE COURT: And is that verdict unanimous?

17 THE FOREPERSON: Yes.

18 THE COURT: Would you tender it to Ms. Mulqueen for  
19 my inspection, please. The Clerk of the Court will take the  
20 verdict.

21 COURTROOM DEPUTY: As to Count One, how do you find  
22 the defendant, Bebars Baslan?

23 THE FOREPERSON: Guilty.

24 COURTROOM DEPUTY: As to Count Two, how do you find  
25 the defendant?

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1 THE FOREPERSON: Guilty.

2 COURTROOM DEPUTY: As to Count Three, how do you  
3 find the defendant?

4 THE FOREPERSON: Guilty.

5 COURTROOM DEPUTY: As to Count Four, how do you find  
6 the defendant?

7 THE FOREPERSON: Guilty.

8 THE COURT: Please poll the jury.

9 COURTROOM DEPUTY: Juror number 1, is that your  
10 verdict?

11 JUROR NUMBER 1: Yes.

12 COURTROOM DEPUTY: Number 2?

13 JUROR NUMBER 2: Yes.

14 COURTROOM DEPUTY: Number 3?

15 JUROR NUMBER 3: Yes.

16 COURTROOM DEPUTY: Number 4?

17 JUROR NUMBER 4: Yes.

18 COURTROOM DEPUTY: Number 5?

19 JUROR NUMBER 5: Yes.

20 COURTROOM DEPUTY: Number 6?

21 JUROR NUMBER 6: Yes.

22 COURTROOM DEPUTY: Number 7?

23 JUROR NUMBER 7: Yes.

24 COURTROOM DEPUTY: Number 8?

25 JUROR NUMBER 8: Yes.

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1 COURTROOM DEPUTY: Number 9?

2 JUROR NUMBER 9: Yes.

3 COURTROOM DEPUTY: Number 10?

4 JUROR NUMBER 10: Yes.

5 COURTROOM DEPUTY: Number 11?

6 JUROR NUMBER 11: Yes.

7 COURTROOM DEPUTY: Number 12?

8 JUROR NUMBER 12: Yes.

9 THE COURT: All right. The Clerk of the Court will  
10 record the verdict.

11 Ladies and gentlemen, your work is complete.  
12 However, the record of these proceedings cannot be completed  
13 until I acknowledge the extraordinary service that you've  
14 rendered the Court in this matter, the obvious sensitivity and  
15 diligence you brought to the exercise of the responsibility  
16 that you willingly assumed, and we record that as a matter of  
17 record on these proceedings.

18 I would ask you to stop in downstairs on the second  
19 floor to our jury clerk's office so that an accurate record of  
20 your service is maintained. Beyond that, you are free to  
21 leave, with the collective thanks of counsel and the Court.  
22 If you'll step inside for just a moment, if there are any  
23 questions you have about your experience, I'll be happy to  
24 answer them. Otherwise, you are excused with our thanks.

25 (Jury exits the courtroom.)

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1 THE COURT: Is there anything else?

2 MR. SMITH: No, Your Honor.

3 THE COURT: Mr. Savitt?

4 MR. SAVITT: Your Honor, just in connection with a  
5 Rule 29(c) and a Rule 33, which we have to file within 14  
6 days. I want to make an application under those rules on the  
7 record, with leave to supplement this application with legal  
8 and factual arguments beyond the 14-day period.

9 THE COURT: What's your application?

10 MR. SAVITT: My application simply is to be able to  
11 file a memorandum in support of the Rule 29(c) and the Rule  
12 33. If I can have till early September, Your Honor.

13 THE COURT: Thirty days.

14 MR. SAVITT: Thirty days.

15 THE COURT: Thirty days. Anything else?

16 MR. SAVITT: I don't believe so, Your Honor.

17 THE COURT: Thank you, folks.

18 MR. SAVITT: Thank you.

19 MR. SMITH: Thank you.

20 MS. DEMAS: Thank you.

21 THE COURT: Good day.

22 (Whereupon, the proceedings were concluded at 4:29  
23 p.m.)

24

25

I N D E X

EXHIBITS

Court Exhibits 1, 2 and 3	746
Court Exhibits 4, 5 and 6	755
Court Exhibits 7, 8 and 8A and 9	757

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Sherry Bryant  
Sherry Bryant, RMR, CRR  
Official Court Reporter